IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

and
HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 7960 of 2004

Between:

P.Shankar, S/o. Lingaiah,
17-2-580/13, Madannapet,
Saidabad, Hyderabad.

..... PETITIONER

AND

1 The Debts Recovery Tribunal, rep.by it's Registrar,
Abids, Hyderabad.
2 The Recovery Officer, Debts Recovery Tribunal,
Abids, Hyderabad.
3 State Bank of Hyderabad, rep.by it's Branch Manager,
Chandur Branch, Chandur,
Nalgonda Dist.

(Respondents 1 and 2 are deleted

as per Court order dated

19.07.2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction, preferably a writ of nature of Certiorari calling for the records pertaining to order dt.25.3.2004 in R.A.No.9/2003 in C.P.No.3/2003 in R.P.No.470/2001 in O.A.No.555/1996 and order of attachment dt.17.4.2001 on the file of 1st & 2nd Respondents and quash the same ,holding the same as illegal, arbitrary , unconstitutional in violation of principles of natural justice, without authority of law, without jurisdiction or pass.

Counsel for the Petitioner:MR.BALRAJ BHODANKAR

Counsel for the Respondent No.3: None appeared.

The Court made the following :

ORAL ORDER:

(Per Hon'ble The Chief Justice)

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1 . Name of Mr. A.Rajashekar Reddy be deleted from the cause list. Respondents 1 and 2 be not shown.

2. Petitioner claims that he is only a guarantor for the loan transaction and personal guarantee was given and had not mortgaged any immovable property with respondent No.3. Certain property was sought to be attached and filed objections before the Recovery Officer which were registered as C.P.No. 3 of 2003 in RP.No.470 2001 in O.A.No.555 of 1996. The same were rejected, against which W.P.No.4363 of 2003 was filed, which was dismissed by this court on the ground that with the orders passed by the Recovery Officer dismissing objections, no interference was permissible in exercise of writ jurisdiction. Petitioner thereafter availed of the alternative statutory remedy of preferring appeal before the Debts Recovery Tribunal, Hyderabad. The Debts Recovery Tribunal, Hyderabad, by the impugned order, dismissed the appeal simply on the ground that in obedience to the orders of the High

Court passed in writ petition, he has no option but to dismiss the appeal. This order is now challenged in this writ petition.

3. Despite notice, respondent No.3 has not put in appearance. As a matter of fact, dismissal of the writ petition was not on merits but was on the ground that orders passed by the Recovery Officer rejecting objections was not amenable to the writ jurisdiction and no interference was called for by this court in exercise of its writ jurisdiction. Dismissal of such writ petition on such a ground would not be a bar to the writ petitioner from availing of the remedy of appeal, which is statutorily provided under the provisions of Recovery of Debts Due to Banks & Financial Institutions Act, 1993, against the orders of Recovery Officer. As such, order impugned in the writ petition is not sustainable in law and is set aside as such.

4 . Accordingly writ petition is allowed. Impugned order is set aside with direction to the Debts Recovery Tribunal, Hyderabad, to hear and decide RA.No.9 of 2003 afresh in accordance with law. No costs.

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DEVINDER GUPTA. C.J.,

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C.V. RAMULU. J.,

Dated: 19.07.2004.

VRK.

To

1 The Debet Recovery Tribunal, rep.by it's Registrar,
Abids, Hyderabad.
2. Two CD copies.

HON'BLE SRI DEVINDER GUPTA,

CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE C.V. RAMULU.

W.P.NO. 7960 OF 2004.

(Order of the Bench delivered by

Hon'ble The Chief Justice)

Dt: 19.07.2004.